Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Reform of the Interstate	)	RM-8356
Access Charge Rules	)	

GTE's REPLY COMMENTS

GTE Service Corporation and
its affiliated domestic
telephone operating companies

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GTE's REPLY COMMENTS

GTE Service Corporation and its affiliated domestic telephone operating companies ("GTE"), with reference to comments dated November 1, 1993, submit the following reply comments regarding the United States Telephone Association ("USTA") Petition for Rulemaking (the "*USTA Petition*") filed on September 17, 1993. USTA asks the Commission to issue a Notice of Proposed Rulemaking ("NPRM") aimed at reform of the existing rules governing interstate access charges.

DISCUSSION

I. THE COMMISSION SHOULD OPEN A RULEMAKING ON ACCESS REFORM AS SOON AS POSSIBLE.

1. A broad consensus of parties supports the need for immediate action to establish a comprehensive proceeding.

There is broad agreement among parties commenting on the *USTA Petition* that an access reform proceeding is needed. Sprint, for example, says (at 1) that it "has long supported a comprehensive review of access and separations rules." CompTel (at 1) "shares the growing consensus -- evidenced by the USTA proposal, the NARUC Access Issues Working Group report, and the Commission's staff report -- that access charge reform should be addressed in a comprehensive manner." The Information Technology Association of America ("ITAA") (at 2) also "agrees with the underlying premise of each of these initiatives." MFS (at 1) "supports the concept of access charge reform" and urges the Commission to open a proceeding. MCI (at 2) agrees

that "there is a clear consensus that the time is ripe for a comprehensive review", and observes that only one of the eighteen parties filing comments on the *NARUC Petition*[1] disagreed with the need for reform. AT&T (at 1) "agrees with USTA and others on the need for broad-ranging reform of the Commission's access rules to bring those rules into alignment with current marketplace and technological realities." NECA (at 3) "believes that the Commission and the industry are already far enough along in the process of analyzing areas for reform and, as USTA suggests, the time is ripe for the Commission to initiate a rulemaking proceeding on these issues."[2]

It is remarkable that such a broad consensus on the need for access reform has developed among parties with such divergent interests. Understandably, these parties differ as to the form such a proceeding should take; GTE will show *infra* why it believes that an NPRM based on the *USTA Petition* is the best course.

Parties also disagree as to the appropriate policies to be adopted in an access reform proceeding. The Commission should address these differences in the proceeding itself. GTE will nonetheless discuss some of the comments made concerning the proposal of USTA, many of which appear to be based upon misreading, or misrepresentation, of the *USTA Petition*. However, differences among parties as to specific solutions should not be allowed to obscure the essential fact that the record of these comments, like those in response to the *NARUC Petition* and the *Staff Paper*[3], almost unanimously support the need for an immediate proceeding to address the issues raised by USTA.

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1 Petition for Notice of Inquiry ("*NARUC Petition*") filed June 25, 1993.

2 *See also* NTCA at 1; GCI at 2; TDS at 1; Bell Atlantic at 1; NYNEX at 2; Yelm Telephone at 1; Tipton Telephone at 1; U S West at 1; Pacific at 1; SWB at 1; BellSouth at 1.

3 Federal Perspectives on Access Charge Reform, authored by the Common Carrier Bureau's Access Reform Task Force, dated April 30, 1993 ("*Staff Paper*").

In support of the *USTA Petition*, GTE urges the Commission to move forward immediately with much-needed reform of its access rules.

In summary: A strong consensus of parties from all perspectives calls on the Commission to initiate a comprehensive proceeding on access reform.

2. The Commission should issue two Notices of Proposed Rulemaking.

While commenters generally agree that the Commission should move forward with a proceeding, they have made different suggestions as to the form such a proceeding should take. MCI (at 2) and others ask the Commission to initiate a Notice of Inquiry ("NOI"). AT&T (at 8-10) recommends that access reform issues be addressed within the context of existing proceedings. Ad Hoc (at 5) supports a proceeding to examine separations issues as the first order of business.

USTA proposes two NPRMs: one NPRM to reform the access rate structure and establish pricing rules linked to the degree of competition in each access market, and a second and concurrent NPRM to examine universal service issues. In GTE's view, this approach will deal with the full range of access reform issues in the most expeditious and efficient manner.

An NPRM would be preferable to an NOI because it would allow the Commission to adopt a new, more effective framework more expeditiously.[4] There is no legal requirement for the Commission to issue an NOI before it proceeds to a rulemaking, and the FCC has often adopted this approach – notably in the case of expanded interconnection.[5] Here, tentative solutions can be proposed based on an extensive

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[4] Southwestern Bell (at 2) recommends a NPRM rather than a NOI to avoid "delaying the essential access reforms for the sake of a needless exercise such as a mere inquiry proceeding at this late date."

[5] In the case of expanded interconnection, the Commission did not find it necessary to issue an NOI; instead, it responded directly to a petition filed by MFS by issuing an NPRM on expanded interconnection for special access.

existing record, including the *USTA Petition*, the *NARUC Petition*, and the *Staff Paper*, as well as comments and replies in relation thereto submitted by numerous parties representing the full range of interests.[6]

Several commenters complain that an NPRM would foreclose consideration of points of view other than those of USTA.[7] This is not the case. A rulemaking proceeding would provide ample opportunity for all parties to advance their proposals. In the case of expanded interconnection, there certainly was no consensus among the parties before the Commission issued its NPRM, and yet the Commission felt no need to develop an NOI to resolve differences among the parties before it issued an NPRM. Instead, it employed the standard device of an NPRM to elicit comments on a wide range of issues -- but with a focus on particular issues of special concern to the FCC -- and then used the parties' comments to develop the necessary record on all of those issues. The *USTA Petition* provides a reasonable basis for an NPRM, since USTA has advanced a balanced proposal that addresses all of the major issues, and it will bring out views from many different perspectives.

AT&T suggests (at 8) that proceedings now under way, or soon likely to be, will address many of the issues raised by USTA. USTA does not, as AT&T suggests (at 9), question the Commission's ability to coordinate different proceedings. In fact, USTA itself has proposed two concurrent, and related, proceedings.

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6 A record was also developed earlier this year in response to proposals filed by Ameritech and Rochester. A petition dealing with universal service issues was recently filed by MFS. *See* Ameritech Petition for Declaratory Ruling and Related Waivers to Establish a New Regulatory Model for the Ameritech Region, DA 93-481, filed March 1, 1993; Rochester Telephone Corporation Petition for Waivers of Part 61 Tariff Rules and Part 69 Access Charge Rules to Implement Its Open Market Plan, DA 93-687, filed May 19, 1993. *See also* Petition of MFS Communications Company, Inc. For a Notice of Inquiry and *En Banc* Hearing, filed November 1, 1993.

7 *For example*, MCI at 2.

Major problems exist in the existing rules for which the current proceedings will provide no remedy. For example, the existing structure of the Part 69 rules is overly prescriptive and based on old technology; and the existing proceedings do not address this fundamental limitation. Further, to base the upcoming price cap review on this outdated structure would be an unfortunate waste of the Commission's limited resources. Clearly, the way to optimize the outcome for both purposes -- rate structure and price caps -- is to develop both in the same proceeding.

Similarly, the Commission's current proceeding on the universal service fund ("USF") is too narrowly focused to permit needed reform.[8] Most of the support for universal service today is provided not through explicit mechanisms like USF but implicitly through local exchange carrier ("exchange carrier" or "LEC") rates for access services. It makes little sense to invest effort in adjustments to the existing USF mechanism while ignoring the larger support issues. Such a course would truly amount to what AT&T (at 2, 8) refers to as duplication.

While, as AT&T (at 9) points out, the Commission has announced its intention to examine the support inherent in the transport interconnection charge ("RIC"), it has not yet done so. Further, there is no proceeding which is considering support flows inherent in other access rates, such as switching or carrier common line ("CCL") charges, nor is there any effort under way to develop a new mechanism for recovering all of these support flows in a manner that will minimize market distortions. These issues are recognized by the parties, but are not being addressed in existing proceedings. They must be dealt with in a coordinated fashion.

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[8] Amendment of Part 36 of The Commission's Rules And Establishment of a Joint Board, CC Docket No. 80-286, Notice of Proposed Rulemaking, FCC 93-435 (released September 14, 1993).

Other commenters, such as Ad Hoc (at 5), suggest that the Commission must first revise the separations process before it can consider reform of its own rate structure or pricing rules. GTE disagrees, for two reasons.

First: Changes to separations will require a great deal of time. Given the rapid changes in technology and in the access market, it is unreasonable to wait until the Joint Board can complete separations reform before the Commission even begins consideration of reform of its access rules.

Second: More fundamentally, access reform should not be driven by the separations process. Separations is not, and never has been, a means for determining appropriate rate levels or structures. It is simply a mechanism for assigning jurisdictional responsibility.

GTE understands that Ad Hoc is concerned about the level of interstate access charges. The USTA proposal recognizes that these rates include support flows which must be dealt with. The Commission should examine these flows, as USTA suggests, and should develop a mechanism for dealing with them. Ad Hoc appears to presume (at 4) that this new mechanism would involve reassigning cost to the state jurisdiction through the separations process. While this may be part of the solution, the Commission must examine all of its options -- including recovery mechanisms within the interstate jurisdiction -- before it makes a decision.[9] The approach recommended by Ad Hoc reverses the logical sequence in that it insists on grappling with separations changes before the fundamental policy choices -- on which the separations changes depend -- have been made.

In summary: The most effective procedural course for the Commission to follow is that proposed by USTA: the establishment of two concurrent NPRM proceedings.

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[9] NYNEX (at 10) also recommends that the Commission consider mechanisms for universal service support which could be developed within the interstate jurisdiction.

II. A PROCEEDING ON ACCESS REFORM SHOULD NOT WAIT FOR ANY THRESHOLD LEVEL OF COMPETITION TO BE ATTAINED.

Several parties suggest that the Commission should not even consider reform of its access rules until some threshold level of competition has been attained. They assert, mistakenly, that the *USTA Petition* assumes that access markets nationwide have become competitive. AT&T, for example, says (at 2) that "USTA's package of access reforms is based on a false assumption" about the nature of the access marketplace. MFS argues (at 4) that access competition is "almost entirely fictional." Sprint declares (at 7) that "competition in the local exchange simply has not progressed to the point that the radical deregulation USTA seeks can be seriously entertained."

GTE believes that significant competition has already developed in many access markets, and that access competition can be expected to increase rapidly over the next few years. These developments make it eminently reasonable – and urgent – for the Commission to ensure that its access rules will lead to effective competition that benefits consumers. GTE will discuss this competition more fully *infra*. However, the exact level of competition should not be a threshold issue that determines whether or not an a rulemaking should be opened on access reform. This is true for at least three reasons:

First: Several important aspects of the Commission's rules are urgently in need of reform, regardless of whether competition has developed, or whether it will ever develop. Chief among these is the rigid rate element structure of Part 69. This structure was designed to serve specific objectives at the time of divestiture, and has since become obsolete. The *Staff Paper* (at 41) recognizes that this structure has had a "chilling effect" on the introduction of new services.[10] The process for obtaining a

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[10] Sprint (at 3) also "concedes that the existing rules may not adequately reflect the technological advances of recent years and new technologies that may be introduced in the forseeable future – indeed that is one reason for initiating a comprehensive inquiry into the rules."

waiver of the rules is difficult, often long, and always uncertain. Further, as the *Staff Paper* (at 20-24) also recognizes, the services made possible by new technology do not fit readily into the existing structure. The *USTA Petition* provides a list of new services, and describes the problems that each would encounter under the current rules. Similarly, the structure of price caps is based on the Part 69 elements; it is therefore not clear what basket each now service should go into, and similar functions, such as switched and special transport, are sometimes placed in different baskets.

While all of these problems do adversely affect local exchange carriers' ability to compete, they are also problems which would merit correction even if no competition existed. Customers in all areas should be able to benefit from new technology and services as quickly as possible. They should not have to wait for some arbitrary threshold level of competition to be attained before these fundamental structural deficiencies in the Commission's rules are addressed.

These are the reasons why USTA proposes a reform of the rate structure rules, and of corresponding price cap rules, for all market areas, regardless of the degree of competition. Once a proceeding has been established, other parties may offer alternative proposals to deal with the problems identified by USTA. These issues – which do not depend on the attainment of any particular level of competition in any market area – should be addressed in an NPRM proceeding.

Second: The USTA proposal does not assume any particular level of competition in any access market. It simply establishes a framework that matches the degree of regulation to the degree of competition in each market. Flexibility is granted only when – and where – a market satisfies criteria previously established by the Commission. Assertions by commenters about the extent of competition nationwide are therefore not relevant to the merits of the USTA proposal.

There is no threshold level of competition which must be attained before this framework can be established. Some parties may disagree with the particular criteria, or with the degree of flexibility proposed by USTA for each level of competitiveness.

Nonetheless, USTA's proposals are reasonable, as will be shown *infra*. In any event, these parameters would be set by the Commission in a rulemaking proceeding, in which all parties would have an opportunity to present their views.

Third: The time to establish a more reasonable framework is now -- not after entrants have captured some arbitrary share of the access market. New firms should decide to enter access markets based on correct market signals. They should not enter in the expectation that they will provide services that LECs are not allowed to provide, or that LECs will be artificially constrained from competing with them. The construction of alternative networks in markets across the country will represent a substantial investment of resources. The suggestion that this investment should not only begin, but should be largely completed, without the benefit of any guidance from real market prices borders on insanity.

The USTA proposal provides safeguards against abuse of any remaining LEC market power in any particular market. However, it also removes artificial structural constraints which today inhibit exchange carriers from providing new services that their competitors can provide. Further, it establishes a reasonable expectation in the minds of all market participants that LECs will be able to respond to competitive entry when it does occur. Finally, the development of a new universal service support mechanism should minimize the artificial incentives for entry which are created today by building support flows into exchange carrier access rates.

By establishing this framework now, the Commission can ensure that new entry into access markets is economic, and that effective competition between entrants and the incumbent LEC will provide the maximum benefit for consumers. In this way, the Commission can also obviate future demands for protection by firms that entered the market in response to incorrect market signals.

In summary: The issuance of an NPRM on access reform should not depend upon the finding by the Commission of any threshold level of competition in access markets. Many aspects of the current rules should be reformed regardless of the

degree of competition. The *USTA Petition* does not presume that competition exists everywhere; instead it establishes a framework that adjusts regulation only in markets where competition is shown to exist. The Commission can best ensure that healthy competition will develop by adopting such a framework now.

III. USTA HAS PROPOSED A REASONABLE FRAMEWORK OF ACCESS RULES.

USTA proposes a balanced framework of rules which has been carefully developed to meet the policy objectives set forth in the *USTA Petition*. These proposals are both reasonable and workable. In the course of the NPRM proceeding recommended by USTA and GTE, competing ideas advanced by other parties will be given full consideration.

In these reply comments, GTE takes the opportunity to correct certain statements of commenters which are apparently based on misreading of USTA's proposal.

Several parties suggest USTA is attempting to deregulate access services.[11] This is not correct. All services which are subject to Title II regulation today would continue to be regulated under USTA's proposal. Additional pricing flexibility would be available, but only in those markets which are shown to be competitive. Even in a Competitive Market Area ("CMA"), LEC services would be subject to greater regulation than any service offered by Competitive Access Providers ("CAPs") today. All CMA services would be offered under tariffs subject to review by the Commission. CMA rates would be required to cover incremental cost, and they would be subject to longer notice periods than apply to CAP services. These rates would continue to be subject to the complaint process, and must comply with all other Commission requirements, such as nondiscrimination and unrestricted resale.

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[11] *See, for example*, MFS at 8.

AT&T asserts (at 6) that wire centers would be reclassified if **in the LEC's own judgment** competitive criteria were met. In fact, these criteria would be included in the Commission's rules. In order to reclassify a wire center, an exchange carrier would then have to demonstrate, in a tariff filing, that the criteria had been met.

MFS (at 9) suggests that LECs would be able to extract "higher, monopoly prices" from "unfortunate captive customers" and use these revenues to subsidize "reduced prices for favored customers in a few target markets."[12] MFS ignores the fact that rates in less competitive markets would be capped, and that these caps would not be linked in any way to the LEC's success or failure in CMA markets.[13] A LEC could therefore not reduce rates in a CMA with the expectation that it would be able to recoup its losses through rate increases in Initial Market Area ("IMA") or Transitional Market Area ("TMA") markets that it would otherwise not have been able to make. MFS (at 9) asserts that these caps would somehow apply "only on a selective basis to particular categories of services in particular geographic markets." In fact, price caps would apply to all markets which had not been shown to meet the CMA criteria.

MFS (at 9) further questions the basis for the FCC's incentive regulation by complaining that price caps would not be based on an examination of the underlying costs of services. This issue was thoroughly debated in the Commission's price cap proceeding, in which the Commission found the then-current rates to be a reasonable basis for price caps. MFS suggests (at 9-10) that price cap indices based on average rates would be set too high to protect captive customers in low-density zones. MFS

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[12] MCI (at 4) also raises the issue of cross-subsidy.

[13] The possibility of any linkage between IMA and CMA price caps and LEC decisions in CMAs would be eliminated by USTA's proposal to eliminate both upper bound sharing and the lower bound adjustment mechanism. This means that any loss of revenue in a CMA would not create any opportunity for the LEC to recoup these losses by raising IMA or TMA rates. IMA and TMA rates would also be subject to banding constraints through the use of Market Area Band Indices ("MABIs"). *USTA Petition* at Y-26.

has its arithmetic backward. Clearly if price caps were set to reflect averaged rates, and if low-density zones have higher than average costs, then the price cap will be too low, not too high, in low-density areas.

MCI (at 5) claims that the USTA proposal is deficient because it fails to impose more burdensome regulation on the LECs as their markets become more competitive. This line of argument has been raised before by MCI in the debate over the streamlining of regulation for AT&T. The Commission rejected this idea, and determined that regulation should be relaxed as competition for AT&T's services increased.[14] As GTE has shown *supra*, the USTA proposal does provide effective safeguards against the kind of anticompetitive behavior described by MCI, since it maintains the same price cap protection that exists today for rates in less competitive markets.

In summary: The *USTA Petition* presents a balanced, reasonable framework for the Commission's access charge rules. While the specifics of any new rules should be determined in a rulemaking based on input from all parties, USTA's proposal provides a reasonable basis for issuance of an NPRM.

IV. ACCESS COMPETITION IS REAL, AND GROWING.

GTE has shown *supra* that the Commission should not delay consideration of access reform until some threshold level of competition is met. It is nonetheless clear that access competition has developed in many access markets, and that it can reasonably be expected to grow rapidly in the future. Some parties, however, attempt to deny these obvious facts.

MFS, for example (at 5) characterizes the existence of any "competitive threat" facing exchange carriers as "imaginary." In fact, as MFS well knows, access

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[14] *See* Competition in the Interstate Interexchange Marketplace, Report and Order, CC Docket No. 90-132, 6 FCC Rcd 5880, 5881-82 (1991).

competition is very real. Extensive market research is not required to confirm this fact. The pages of telecommunications trade periodicals announce new CAP ventures with regularity. For example, in early October, MFS announced that its sixteenth network would be operational in early 1994 and would compete with another CAP already in that market.[15] A week later, MFS Intelenet announced plans to provide one-stop shopping for local and long distance services "in 60 to 70 U.S. cities within five years."[16] Less than a month later, while announcing yet another MFS acquisition, MFS President and Chief Operating Officer Royce J. Holland stated that MFS does not "see capital as a constraint to our growth" since MFS "raised $500 million this year from the equity markets."[17]

Other CAPs are growing by leaps and bounds, either through mergers with cable television companies or through stand-alone efforts. "The competitive access industry currently is thriving, and the future looks good..."[18] *Geodesic Network II*, a recent comprehensive study of the status of competition for telecommunications services observed:

> CAPs are now operating in so many cities and suburbs that it is difficult to keep a complete count. These include 24 of the top 25 metropolitan service areas, and the cities and regions they serve contain the

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15 "MFS Unit Gets License in U.K.; Tampa Network Planned," Telecommunications Reports, October 4, 1993, at 5-6.

16 "MFS Unveils `One-Stop' Local/Long Distance Services, Plans Rollout in 60 to 70 Cities within Five Years," Telecommunications Reports, October 11, 1993, at 9-10.

17 "MFS' Holland Sees Advantages in Trend Toward Telco-Cable TV Mergers; MFS Agrees to Acquire FiberNet," Telecommunications Reports, November 8, 1993, at 18-19.

18 "ALTS Convention Focuses on Changes Sweeping Industry; Partnerships, Telco-Cable Issues Highlighted." Telecommunications Reports, November 15, 1993 at 10.

> headquarters of approximately 70 percent of the companies that appear on the Communications Week 100 list.[19]

This statement, written more than a year ago, does not include additional growth which has since occurred.

In the largest metropolitan areas, CAPs have already taken substantial shares of the markets they have targeted. Bell Atlantic, for example, was able to demonstrate two years ago that it had already lost nearly 50% of the DS-3 market in the Washington metro area. In some cities, as many as five CAPs have already entered the market. However, CAP market entry is no longer confined to the largest cities. CAP fiber rings are now operating in Fort Wayne, Indiana, and Grand Rapids, Michigan. Fiber is also stretching into suburban areas surrounding cities where CAPs have already established themselves. Both Teleport and MFS, for example, are extending their Dallas networks to reach customers in the Las Colinas area. New fiber entrants add to existing, and growing competition from microwave and VSAT systems.

Geodesic Network II also documents the extensive alliances and/or mergers between cable television companies and CAPs.[20] It notes: "Overall, cable interests now control over 50 percent of CAP revenues. Spurred by the promise of their new alliances, cable-CAP companies are now deploying fiber-optic cable at record rates."[21]

Cable networks already pass the vast majority of households in the United States, and technology is already available which will allow these networks to provide telephone service at relatively low cost. A recent study by David P. Reed of the FCC's Office of Plans and Policy estimates that a cable network could be modified to provide

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[19] Peter W. Huber, Michael K. Kellogg, and John Thorne, *The Geodesic Network II: 1993 Report on Competition in the Telephone Industry*, ("*Geodesic Network II*") at 2.25.

[20] *Geodesic Network II* at 2.58-63.

[21] *Id.* at 2.59.

switched narrowband telephone service at a cost of $207 per subscriber.[22] Scientific-Atlanta Inc. has just announced the availability of equipment for this purpose. Scientific-Atlanta also quotes a cost per subscriber of "about $300," which is close to Reed's estimate.[23] A Scientific Atlanta spokesman stated that "several big contracts" are expected to be announced in the near future and that "Some of the big names in the news these past few weeks are some of the people we've been working with."

Cellular services are already widely available today, and it is reasonable to expect that wireless alternatives to LEC access will further develop over the next few years. The Commission has recently announced plans to make available spectrum for Personal Communication Service ("PCS"). AT&T claims (at 5) that "the prices for such services would have to decline dramatically for customers to view them as a meaningful substitute for traditional land-line services." However, a recent study of one of GTE's rural exchanges in Wisconsin found that cellular service was available throughout the exchange at rates which were competitive with GTE's landline rates for the actual calling patterns of many local subscribers – including low volume residence and business customers.[24]

In summary: There is ample evidence that significant competition exists today in many access markets, and it is reasonable for the Commission to expect much more widespread competition to develop over the next few years. Far from being "imaginary", access competition is a fact of life, and it is essential that rules be in place

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22 David P. Reed, "The Prospects for Competition in the Subscriber Loops: The Fiber-to-the-Neighborhood Approach," at 4. Presentation made at Twenty-First Annual Tele-communications Research Policy Conference, Solomons Island, Maryland, September 1993.

23 *See* "Scientific-Atlanta's New Device to Allow Phone Calls Using Cable-TV System," Wall Street Journal, Monday, November 15, 1993 at B6.

24 Edward C. Beauvais, "Local Exchange Service: What Bottleneck?" USTA TELETIMES, Spring 1993, at 2.

which will ensure that market entry leads to effective competition that benefits consumers.

V. ACCESS REFORM SHOULD BE BASED ON A REASONABLE VIEW OF ACCESS MARKETS.

As GTE has shown *supra*, the extent of access competition should not be a threshold issue in determining whether the Commission should open a proceeding on access reform. However, even to the extent that commenters have raised this issue, they have not based their comments on a reasonable definition of the relevant access market.

Commenters have focused on an aggregate, nationwide view of access.[25] Evidence on a national basis is of no practical usefulness in evaluating the degree of competition in any particular access market. In the long distance market, nationwide presence, ubiquitous origination and termination, and name recognition may be important factors. Access markets, in contrast, are fundamentally local in nature. The existence of an alternative provider in Los Angeles does little good for the customer in Bakersfield. By the same token, if a customer in Los Angeles has competitive alternatives, then the LEC in that local market will lack market power, regardless of what may or may not be happening in other markets.

Commenters implicitly acknowledge this fact, even as they attempt to minimize the extent of access competition. MFS, for example (at 5), says:

> the emergence of competition within some specialized niche markets for a limited range of services within a relative handful of geographic markets has had an imperceptible impact on LEC revenue and profits, and has not changed the underlying market dynamics that cement the LECs' market power.

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[25] *See, for example*, AT&T at 5, Sprint at 4. Even as a measure of nationwide market share, the numbers cited by these parties are misleading. For example, they do not include access purchases made by end users.

Unlike MFS, USTA correctly recognizes that access markets are local, not national. It asks for increased flexibility only in those limited geographic markets where, as MFS acknowledges, competition has already developed.

Further, in evaluating the appropriate regulatory treatment for these access markets, the relevant issue is one of market power, and not simply of market share. If the availability of access alternatives effectively checks an exchange carrier's ability to raise prices in a given market, then that carrier lacks market power, regardless of what its market share may be. The Commission recognized this fact in its consideration of streamlined regulation for AT&T. The competitive criteria proposed by USTA properly focus on indicators of market power, not on actual losses of demand by the LEC. While competitors may find it advantageous to be protected until some proportion of market demand has been lost by the incumbent, such a policy would not produce the greatest benefits for consumers.[26]

When the Commission considered streamlining of AT&T's long distance services, it looked at markets on a nationwide basis, but segmented them by service. The *USTA Petition* does just the opposite for access services. For the reasons given *supra*, it looks at access markets on a geographic basis. However, within each geographic area, it considers all access services, or all services within an access category. USTA's approach recognizes that access services are highly substitutable for one another, and that the existing distinctions among services are often artificial. Further, by considering broad categories of access services, USTA's proposal avoids the inevitable attempts of parties to position themselves by miscategorizing their service offerings. Just as MCI once portrayed itself as providing "shared private line service"

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[26] As stressed by a large-user group, the FCC "should not impose price umbrellas to placate prospective competitors." Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Ex parte communication, letter to the Secretary of the FCC dated July 2, 1992 from Morrison & Foerster, representing California Bankers Clearing House Association and the New York Clearing House Association, at 5.

rather than MTS, so today alternative access providers often deny that they are providing local exchange services in competition with a LEC.

Similar attempts at positioning are advanced by commenters. Sprint, for example, (at 4) attempts to draw distinctions between switched and special services. CompTel (at 8) refers to special access as a "retail" service and switched access as a "wholesale" service. Both parties ignore the fact that switched and special access are direct substitutes for one another for any customer with sufficient volume to justify a special access facility; and that many customers purchase direct special access connections to an IXC for the purpose of obtaining switched services. The Commission has recognized that switched and special transport are functionally similar, and has tentatively proposed to combine them in a single price cap basket.[27] Further, while some special access circuits are purchased by end users directly from LECs, others are purchased from IXCs who buy larger circuits on a "wholesale" basis from the LEC, multiplex them, and resell smaller units to end users. Conversely, some large end users purchase switched access directly from LECs. What CompTel (at 8) calls "USTA's attempt to blur the line between switched and special access" is nothing more than an appropriate recognition of the relevant access market.

In summary: USTA correctly focuses on local markets, rather than national averages, and on market power, rather than on market share.

VI. MFS' LATEST CLAIMS CONCERNING THE LOCAL "BOTTLENECK" SHOULD NOT DETER THE COMMISSION FROM MOVING FORWARD WITH ACCESS REFORM.

In its 1990 Petition requesting that the Commission open a rulemaking on interconnection, MFS justified its request by telling the Commission that adoption of expanded interconnection would bring the benefits of access competition to consumers.

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[27] *See* Transport, Rate Structure and Pricing, CC Docket No. 91-213, Report and Order and Further Notice of Proposed Rulemaking, 7 FCC Rcd 7006, 7067 (1992).

Further, MFS emphasized that it expected the demand for its services would come from "capturing new growth or by serving a need for redundant facilities."[28] For this reason, MFS' entry would cause "only minor and temporary declines in BOC service quantities."

However, now that the Commission has adopted expanded interconnection for both switched and special services, MFS has discovered that interconnection will not, in fact, lead to access competition. Instead, MFS has advanced (at 6) a new list of conditions which it claims must be eliminated before competition can develop. At the same time, MFS now suggests that the LECs must lose a substantial share of the access market demand before any reform of the access rules should be undertaken by the Commission.

It is clear from these comments that MFS will never agree that competition has arrived; it will always seek to "move the goalposts" in such a way as to preserve the artificial market advantage afforded it by asymmetric regulation of exchange carriers. If the latest set of "preconditions" to access competition by MFS were met, MFS would quickly invent another list.

MFS's claims refer, conveniently enough, to matters which are generally within the purview of state and local authorities, rather than this Commission. Most of the factors which MFS claims are essential to the LEC's "bottleneck" are either greatly exaggerated or nonexistent.

MFS (at 6) claims that exchange carriers "enjoy exclusive franchises to provide local telecommunications services in many states." Exchange carrier franchises have not proven to be a barrier to CAP market entry. CAPs have set up operations, in fact, in dozens of states. A number of states do not grant franchises at all. Others have not classified CAP services as local exchange service. Among those that have, Illinois

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[28] Hatfield Associates, Inc., "The Economic Impact of Requiring Local Exchange Carriers to Unbundle Interstate Access," at 19-20 (attached to MFS' Notice of Filing, RM-7249, April 4, 1990, at 2).

simply requires a showing of technical and financial ability in order to obtain a certificate.[29] Also, New York has certified a number of CAPs as local exchange carriers, and has directed New York Telephone to treat CAP switches "just like any end office of NYT."[30]

The real question is not whether CAPs are precluded but whether CAPs are willing to assume the responsibilities that are associated with being an exchange carrier. MFS has objected strenuously to being treated in the same manner as exchange carriers in Texas, arguing it does not provide services that could be defined as local telecommunications services.[31]

MFS (at 6) also claims LECs enjoy "favorable and discriminatory" tax treatment. But MFS has things exactly backwards. Exchange carriers are subject to centrally-assessed property taxes, higher assessment levels, sales taxes, gross receipts taxes and local excise taxes.[32] A recent paper prepared for the Council of Governor's Policy Advisors ("*Tax Policy Paper*") found that, while tax treatment varied widely from state to state, exchange carriers are generally subjected to more taxes and higher tax rates than non-utility firms. Further, the *Tax Policy Paper* (at 15) noted that:

> the easiest way to eliminate the distortions and potential societal costs associated with specific taxes on telecommunications would be to

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[29] "No Certificate of Service Authority issued by the Commission shall be construed as granting a monopoly or exclusive privilege, immunity or franchise." Public Utilities Act Telecommunications, 220 ILCS Section 5/13-401.

[30] See State of New York Department of Public Service Order issued October 4, 1993, Case 92-C-0665.

[31] *See* Texas Public Utility Commission Docket Nos. 9618 and 9640.

[32] *See* "A Sensible Approach to the Taxation of Telecommunications Services," The State Factor, Volume 18, Number 2, February 1992 published by the American Legislative Exchange Council, a bipartisan, individual membership organization of state legislators.

> discontinue those taxes and to tax all business enterprises under the same set of rules.[33]

For example, in the state of Ohio:

> Telephone companies pay taxes on all their equipment and other personal property used in providing its service. The property tax is computed by multiplying 88% of the current value of a company's personal property by the appropriate local mileage rate. In contrast, other businesses pay a personal property tax based on only 25% of the business' current personal property value.[34]

The *Tax Policy Paper* concluded by stating (at 17): "Much work remains to be done before the tax system can be said to be neutral with respect to telecommunications services."

As for MFS' assertion (at 6) that exchange carriers enjoy "preferred access to public and private rights-of-way and building space," CAPs and IXCs have been very successful in obtaining access to right-of-way from cities, counties, railroads, gas pipeline companies and private citizens. A large proportion of the CAP industry – more than half – is affiliated with cable companies; many other CAPs are joint ventures with electric power companies.

In summary: MFS has attempted once again to "move the goalposts" by setting forth a new list of preconditions to access reform. The points raised by MFS are not, in

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[33] Emphasis added. Karl E. Case, "State and Local Tax Policy and the Telecommunications Industry" ("*Tax Policy Paper*"), 1992, prepared for the Council of Governors' Policy Advisors.

[34] Testimony of Scott Clark, Acting Associate Tax Counsel - GTE Corporation, Presented to the State of Ohio Senate Ways and Means Committee, April 27, 1993, at 2. Changes to this situation to create a more equitable arrangement are under discussion in the Ohio legislature.